APPENDIX A.

United States Court of Appeals for the Ninth Circuit.

Eli B. Castleman, Marion V. Castleman, Louis Feuerman, Julius November, Eleanor November, and Bernard Reich, Appellants, vs. Howard R. Hughes, RKO Pictures Corporation, RKO Radio Pictures, Inc., The Chase National Bank of the City of New York, Eli B. Castleman, Marion V. Castleman and Louis Feuerman, Appellees. No. 14,573. Nov. 3, 1955.

Appeal from the United States District Court for the Southern District of California, Central Division.

Before: Healy and Fee, Circuit Judges, and Walsh, District Judge.

Per Curiam

This is an appeal from a judgment of dismissal and from an order denying motions of appellant Bernard Reich, Esq., that the court determine and enter judgments in his favor for attorney's fees and costs as against certain of the parties.

The suit is, or was, one of several shareholders' derivative suits brought in both state and federal courts throughout the United States alleging damage to RKO Pictures Corporation through asserted mismanagement on the part of its corporate officers, mainly Howard R. Hughes. For an account of the events giving rise to the litigation consult Schiff v. RKO Pictures Corp. (Del.), 104 Atlantic 2d 267. The validity of a sale to Hughes of all the assets of that corporation, including all causes of action held by it against any person, including Hughes, had prior to the decision below been upheld by the Delaware Chancery Court in the above cited case, rendering the present action moot. Also prior to the decision a suit involving the same issues here presented had gone to judgment in a Nevada state court. The court below held, and we agree,

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that the Nevada judgment is to be given the effect of *res judicata*.[1] There was no error in dismissing the suit.

What remains to be considered is the contention of Reich that the court erred in denying his motions to award him attorney's fees and costs for services in the suit. Reich had been employed by Louis Kipnis, a New York attorney, to file a "standby" suit in the Southern District of California on behalf of Eli and Marion Castleman as shareholders of RKO. The Castlemans were clients of Kipnis. Some eight days after the institution of this suit the Castlemans, through Kipnis as their counsel, brought the above-mentioned suit in the Nevada state court. Some months later on Kipnis discharged Reich, or tried to.[2] In the Nevada action Kipnis was recipient of an award of attorney's fees for services on behalf of the Castlemans as RKO shareholders. The Nevada court ruled that no counsel representing the Castlemans in actions elsewhere were to be entitled to any fee other than that allowed by it.

In this posture of affairs we see no error or abuse of discretion in the court's relegating Reich to his remedy against his employer Kipnis—a remedy now admittedly being pursued by Reich in the New York courts.

Affirmed.

(Endorsed:) *Per Curiam* Opinion. Filed Nov. 3, 1955.
Paul P. O'Brien, Clerk.

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[1]Reich argues that the Nevada action was collusive, but the record does not bear out his contention.

[2]Reich appears to have acquired two clients of his own, namely, Julius November and Eleanor November, whose names appear as appellants in the caption on this appeal. Through Reich the Novembers, asserting that they were stockholders in RKO, moved for leave to intervene in the suit below. Their motion was not acted upon but was taken under consideration along with the motion to dismiss the suit. As already appears, the motion to dismiss was granted, so that the Novembers at no time became parties to the cause.

APPENDIX B.

MEMORANDUM GRANTING MOTION TO DISMISS.

This case is one of several shareholders' derivative actions filed in both state and federal courts throughout the United States involving alleged injury to the same corporation at the hands of the same corporate officers. [For a detailed history of the events giving rise to this litigation see Schiff v. R.K.O. Pictures Corp., 104 A. 2d 267 (1954).]

Defendant R.K.O. Radio Pictures, Inc., has made a motion to dismiss this action with prejudice. The occurrence of two events since the institution of this action compels that this motion be granted.

First, a sale of all of the assets of the corporation on behalf of which this action was brought to the corporate officer who is the alleged principal wrongdoer has been consummated. The terms of the contract of that [804] sale provide that all causes of action held by the corporation against any person including that particular officer are to be a part of the assets sold. The validity of this sale has been upheld by the Delaware Chancery Court. [Schiff v. R.K.O., *supra.*] The effect of that sale is to render this action moot.

Second, that action involving the same issues which are or would be present here instituted in a Nevada state court has gone to judgment on all of these issues. That judgment must be given the effect of ***res judicata*** by this court.

The motion of local counsel, Bernard Reich, for attorney's fees and costs must be denied. Local counsel was employed to bring this action by New York counsel for plaintiff-shareholders Castleman. Employing counsel has

been the recipient of an award of attorney's fees made in the Nevada action heretofore referred to. Local counsel must look to his employer and not to this court for his fee. Even if this were not the case this court could not make an award of fees to local counsel because the Nevada court has held that no counsel representing plaintiffs Castleman in actions pending elsewhere is entitled to any fee other than that allowed by it.

Dated: This 5th day of August, 1954.

/s/ BEN HARRISON,
Judge.

[Endorsed]: Filed August 5, 1954 [805].

APPENDIX C.

United States Court of Appeals for the Ninth Circuit.

Eli B. Castleman, *et al.*, Appellants, vs. Howard R. Hughes, R K O Pictures Corporation, *et al.*, Appellees.

No. 14,573.

JUDGMENT.

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment

Filed and Entered: November 3, 1955

PAUL P. O'BRIEN, Clerk.

APPENDIX D.

CONSTITUTION

Article IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit.

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

RULE 23. CLASS ACTIONS.

(b) *Secondary Action by Shareholders.* In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law and (2) that the action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort.

(c) *Dismissal or Compromise.* A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraphs (2) or (3) of subdivision (a) notice shall be given only if the court requires it.

RULE 24. INTERVENTION.

(a) *Intervention of Right.* Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof. As amended Dec. 27, 1946, effective March 19, 1948.

(b) *Permissive Intervention.* Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. As amended Dec. 27, 1946, effective March 19, 1948.

(c) *Procedure.* A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C., §2403.